

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
WESTERN DIVISION**

JANE DOE #1, on behalf of herself and all others similarly situated,

Plaintiff,

v.

MG FREESITES, LTD, d/b/a  
“PORNHUB”; MG FREESITES II  
LTD; MINDGEEK S.A.R.L.;  
MINDGEEK USA INCORPORATED;  
MG CY HOLDINGS LTD;  
MINDGEEK CONTENT RT LIMITED;  
9219-1568 QUEBEC, INC., d/b/a  
MINDGEEK; MG BILLING LTD,

Defendants.

CIVIL ACTION NO:  
7:21-cv-00220-LSC

Honorable L. Scott Coogler

**PLAINTIFF JANE DOE #1'S  
MOTION FOR PARTIAL SUMMARY JUDGMENT**

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Pursuant to Federal Rule of Civil Procedure 56, Plaintiff Jane Doe #1, by and through undersigned counsel, hereby moves this Honorable Court for partial summary judgment on her claim brought under 18 U.S.C. §§ 2252 and 2252A, and in support thereof, states as follows:

### **INTRODUCTION**

This case involves the victimization of minors whose child sexual abuse material (“CSAM”) appeared on some of the largest pornography websites in the world. The evidence set forth in this Motion establishes beyond dispute that Defendants—the owners and operators of the MindGeek pornography websites (hereinafter collectively referred to as “MindGeek”)—knowingly received, possessed, reviewed, and distributed the CSAM of Plaintiff Jane Doe and the class members and are thereby civilly liable for violations of 18 U.S.C. §§ 2252 and 2252A.

As discussed more fully below, evidence from MindGeek’s own business records and its own executives, officers, and employees shows how MindGeek reviewed all content, acknowledged failures in its internal moderation practices, internally identified large amounts of content as CSAM, failed to remove all CSAM that it had flagged or learned about, failed to report CSAM in a timely fashion, and continuously allowed CSAM to appear on its websites. All of this shows MindGeek’s deliberate indifference and ignorance to—and, hence, its knowledge

of—the CSAM on its websites and, therefore, summary judgment on Plaintiff Jane Doe's child pornography/CSAM claim should be granted.

**STATEMENT OF UNDISPUTED RELEVANT MATERIAL FACTS**

***Plaintiff Jane Doe***

1. In early 2018, when Alabama native Jane Doe was 16 years old, [REDACTED] filmed her engaging in a sexual act in his car. (Ex. 2, Jane Doe Decl. ¶¶ 1,4 9; doc. 1 at ¶ 100).

2. On February 27, 2018, [REDACTED] uploaded this video of Plaintiff (hereafter “Car Video”) to his Pornhub account with the username [REDACTED] and titled it [REDACTED] (See Ex. 4, Mindgeek\_NDAL\_000428147 at 428149 (showing [REDACTED] [REDACTED]), Ex. 1, Mindgeek\_NDAL\_00104652 at Tab [REDACTED] row 34 (showing [REDACTED] and that the title was [REDACTED]), Ex. 10, Sept. 6, 2024 Aff. of Lyndsie Curry, Esq. (stating that [REDACTED] was prosecuted for dissemination/display of obscene material under 17; the relevant videos were [REDACTED] and Jane Doe was the victim), and Ex. 3, P1.1183 row 2 (showing [REDACTED] with its original title)).

3. On August 26, 2019, [REDACTED] commented on a Pornhub video stating,

[REDACTED] (Ex. 1 at Tab “[REDACTED]”

row 10).

4. On November 1, 2019, the title of the Car Video was changed to

[REDACTED] (Ex. 1 at Tab [REDACTED]

[REDACTED] row 34 (showing [REDACTED] uploaded Video [REDACTED] titled [REDACTED] [REDACTED]), Ex. 10 (stating that [REDACTED] was prosecuted for dissemination/display of obscene material under 17; the relevant videos were [REDACTED] and Jane Doe was the victim), and Ex. 3 at row 2 (showing title change of [REDACTED]

5. That same day, [REDACTED] uploaded a video to Pornhub titled,

[REDACTED] (Ex. 1 at Tab

“[REDACTED]” row 17).

6. On November 21, 2019, the title of the Car video was changed to

[REDACTED] (Ex. 1 at Tab

“[REDACTED]” row 34 (showing [REDACTED] g uploaded [REDACTED] titled [REDACTED] Ex. 10 (stating that [REDACTED] was prosecuted for dissemination/display of obscene material under 17; the relevant videos were Pornhub [REDACTED]; and Jane Doe was the victim), and Ex. 3 at row 3 (showing title change of Video [REDACTED]).

7. On November 23, 2019, the title of the Car video was changed to “[Plaintiff’s First Name] [REDACTED] (Ex. 1 at Tab [REDACTED]” row 34 (showing [REDACTED] uploaded Video [REDACTED] titled [REDACTED] Ex. 10 (stating that [REDACTED] was prosecuted for dissemination/display of obscene material under 17; the relevant videos were Pornhub Video [REDACTED]; and Jane Doe was the victim), and Ex. 3 at row 4 (showing title change of Video ID [REDACTED]).

8. On December 31, 2019, the title of the Car video was changed to [REDACTED].” (Ex. 1 at Tab [REDACTED] “[REDACTED]” row 34 (showing [REDACTED] uploaded [REDACTED] titled [REDACTED] Ex. 10 (stating that [REDACTED] was prosecuted for dissemination/display of obscene material under 17; the relevant videos were Pornhub Video ID [REDACTED]; and Jane Doe was the victim), and Ex. 3 at row 5 (showing title change of [REDACTED]).

9. Sometime in late 2018 or early 2019, [REDACTED] drugged Plaintiff with an unknown pill and filmed himself raping her (hereafter “Rape Video”). (Ex. 2 at ¶ 5).

10. On January 20, 2020, the title of the Car Video was changed to [REDACTED] [REDACTED] (Ex. 1 at Tab [REDACTED] Videos” row 34 (showing [REDACTED] uploaded Video [REDACTED] titled “[REDACTED]

[REDACTED] Ex. 10 (stating that [REDACTED] was prosecuted for dissemination/display of obscene material under 17; the relevant videos were Pornhub Video ID [REDACTED] and Jane Doe was the victim), and Ex. 3 at row 6 (showing title change of [REDACTED])

11. On February 24, 2020, an individual named [REDACTED]

[REDACTED]. (Ex. 7, Mindgeek\_NDAL\_00606289; Ex. 8, Mindgeek\_NDAL\_00606290; Ex. 6, Mindgeek\_NDAL\_00606288). She wrote, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (Ex. 7).

12. [REDACTED] wrote again stating [REDACTED]

[REDACTED]

[REDACTED] Ex. 8).

13. She also wrote, [REDACTED]

[REDACTED]" (Ex. 6).

14. On February 25, 2020, Pornhub employee [REDACTED]

[REDACTED] | [REDACTED]

[REDACTED]

[REDACTED]" (Ex. 7; Ex. 8; Ex. 6).

15. That same day [REDACTED]

[REDACTED] Ex. 1 at Tab “[REDACTED]” rows 8,9, and 19).

16. On May 1, 2020, [REDACTED] uploaded the Rape Video. (Ex. 1 at Tab “[REDACTED]” row 6 (showing upload of [REDACTED] titled [REDACTED] Ex. 10 (stating that [REDACTED] was prosecuted for dissemination/display of obscene material under 17; the relevant videos were Pornhub Video ID [REDACTED]; and Jane Doe was the victim), and Ex. 3 at row 31 (showing title change of [REDACTED])).

17. Plaintiff became aware of the videos of her that were on Pornhub around June 2020, when a girl referred to Plaintiff as “that girl from Pornhub.” (Ex. 2 at ¶ 7).

18. Plaintiff contacted law enforcement to report the videos. (Ex. 2 at ¶ 8).

19. On July 14, 2020, Investigator [REDACTED]

[REDACTED] emailed MindGeek informing them of [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] (Ex. 4 at MindGeek\_NDAL\_00428151).

20. On July 15, 2020, MindGeek DMCA and Trust & Safety Agent [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (Ex. 4 at MindGeek\_NDAL\_00428147-00428150).

21. The information showed that [REDACTED] uploaded a total of [REDACTED]

[REDACTED] (Ex. 4 at MindGeek\_NDAL\_00428150-00042851; *see also* Ex. 5, MindGeek\_NDAL\_00114478).

22. MindGeek [REDACTED]

[REDACTED] (Ex. 4 at MindGeek\_NDAL\_004281).

23. That same day MindGeek [REDACTED]

[REDACTED]. (Ex. 5, MindGeek\_NDAL\_00114478).

24. On April 7, 2022, [REDACTED] pled guilty to, *inter alia*, “Dissemination/Display of Obscene Matter under 17,” a Class B Felony, in the Circuit Court of Tuscaloosa County, Alabama, and was sentenced to 10 years in prison. (Ex. 11, Plea Agreement and Sentencing Order for CSAM at 1-2).

25. That same day [REDACTED] also pled guilty to Sexual Abuse in the First Degree in violation of Alabama Code 13A-6-066 and was sentenced to 10 years in prison. (Ex. 74, Plea and Sentencing Order for Sexual Abuse at 1; Ala. Code § 13A-006-066).

26. On February 11, 2021, Jane Doe filed her class action against Defendants. (Complaint, doc. 1).

27. On April 19 and May 5, 2022, [REDACTED] [REDACTED] . (Ex. 12, MindGeek\_NDAL\_00575654, rows 3306 & 12805).

***MindGeek***

28. MindGeek owns and controls the pornographic websites Pornhub, YouPorn, RedTube, and Tube8—which MindGeek has referred to as “Tubes”—as well as other “major website networks” which all collectively serve to increase traffic to MindGeek’s Tube websites. (Ex. 13, MindGeek\_NDAL\_00384196 at 00384199; Ex. 14, MindGeek\_NDAL\_00033431 at 00033442; Answer, Doc. 45 at ¶¶ 45-46).

29. MindGeek’s websites are some of the largest commercial pornography websites in the world, and the websites are available worldwide. (Ex. 14 at 00033435, 00033442, 00033445; Answer, Doc. 45 at ¶ 46 (discussing Pornhub specifically)).

30. MindGeek has admitted that [REDACTED] [REDACTED] [REDACTED] (Ex. 16, MindGeek Responses to Plaintiff’s First RFAs at 3).

31. MindGeek's former Content Manager acknowledged [REDACTED]

[REDACTED] (Ex. 78, S. Nguyen Dep. Trx. at 434:6-8, 436:4-11).

32. [REDACTED]

[REDACTED]. (Ex. 83, Mindgeek\_NDAL\_00071443).

33. [REDACTED]

[REDACTED] (Ex. 82, [REDACTED] Apr. 18, 2024 Dep. Trx. at 20:23-21:1, 76:14-78:9).

34. [REDACTED]

[REDACTED]. (Ex. 82 at 90:24-91:3).

35. MindGeek first began reporting CSAM to the National Center for Missing and Exploited Children ("NCMEC") in April 2020. (Answer, Doc. 45 at ¶ 135).

36. On December 4, 2020, the New York Times published an article entitled *The Children of Pornhub*. (Answer, Doc. 45 at ¶ 118).

37. Later in December 2020, Pornhub removed all user-generated content from unverified user accounts on its website bringing the total number of videos available on Pornhub down from approximately 13.7 million to approximately 4 million. (Answer, Doc. 45 at ¶ 51). [REDACTED]

[REDACTED] (Ex. 4 at MindGeek\_NDAL\_00428150).

38. [REDACTED]

[REDACTED] . (Ex. 21, [REDACTED] 30(b)(6) Dep. Trx. (CDCA) at 63:6-64:12)

39. Jane Doe filed this lawsuit on February 11, 2021. (Complaint, Doc. 1).

40. Many of MindGeek's efforts to prevent CSAM from being uploaded on its websites began or increased in scale significantly from 2020 forward, the implementation and execution of which were controlled by MindGeek.

a. In 2019, MindGeek began using [REDACTED]

[REDACTED] (Ex. 87, Mindgeek\_NDAL\_00174042; Ex. 105, Mindgeek\_NDAL\_00010454 and Mindgeek\_NDAL\_00022847), [REDACTED]

[REDACTED] (Ex. 88, Mindgeek\_NDAL\_00528542 at 00528544- 00528545, Mindgeek\_NDAL\_00528541, & Mindgeek\_NDAL\_00528521) and [REDACTED]

[REDACTED] (Ex. 89, Mindgeek\_NDAL\_00006964).

b. In 2020, Mindgeek [REDACTED] (Ex. 90, Mindgeek\_NDAL\_00093002), [REDACTED] [REDACTED] [REDACTED] (Ex. 91,

Mindgeek\_NDAL\_00174047), [REDACTED] (Ex. 92, Mindgeek\_NDAL\_00393093), [REDACTED] [REDACTED] [REDACTED] Ex. 93, MindGeek\_NDAL\_00520346), [REDACTED] [REDACTED] [REDACTED] (Ex. 94, MindGeek\_NDAL\_00472081).

c. In 2021, Mindgeek implemented [REDACTED] (Ex. 95, Mindgeek\_NDAL\_00145147), [REDACTED] (Ex. 96, MindGeek\_NDAL\_00435662 at 435662), and [REDACTED] (Ex. 97, Mindgeek\_NDAL\_00571009 and Mindgeek\_NDAL\_00571015).

d. Further, Mindgeek implemented IWF Hash Lists in 2022 (Ex. 98, 2022 Pornhub Transparency Report) and StopNCII.org and TakeItDown in 2023 (Ex. 99, 2023 Pornhub Transparency Report).

### ***User Uploads & Downloads***

41. Users can upload pornographic videos or photos to MindGeek's websites. (Ex. 15, [REDACTED] 30(b)(6) Dep. Trx. (Jan. 24, 2024) at 62:22–63:17).

42. On Pornhub, historically, there were three types of users who could upload content to Pornhub historically: 1) unverified users, 2) verified users or Model Program Participants, 3) Content Partners. (Answer, Doc. 45 at ¶ 76; Ex. 15 at 62:22–63:17).

43. Unverified users were [REDACTED] (Ex. 109, [REDACTED] CDCA Dep. Trx. at 80:2-5.)

44. Prior to 2020, any user who [REDACTED]

[REDACTED] (Ex. 15 at 66:5-13).

45. As recently as 2020, users [REDACTED]

[REDACTED] (Ex. 21 at 34:5-35:14, 39:2-13-43:10).

46. Model Program participants were required to [REDACTED]

[REDACTED] (Ex. 21 at 30:2-9).

47. Content Providers [REDACTED]

[REDACTED] (Ex. 16 # 4).

48. Prior to 2020, [REDACTED]

[REDACTED] (Ex. 109

at 80:6-11, 82:17–84:24, 98:15-22; Ex. 19, MindGeek\_NDAL\_00516381 at 6; Ex. 20, MindGeek\_NDAL\_00564963 at 1-2).

49. In early December of 2020, Mindgeek [REDACTED]

[REDACTED] (Ex. 109 at 81:13-83:7; Ex. 100, [REDACTED] Dep. Exhibit 68 (C.D.

Cal., Aug. 9, 2023) at 1. In other words, Mindgeek required users to provide an ID to upload videos to Pornhub. (Ex. 109 at 80:2-11).

50. Prior to 2020, [REDACTED]

[REDACTED] (Ex. 17, [REDACTED] Dep. Trx. at 176:19–177:7).

***Tags, Titles, And Categories***

51. When a user uploads a piece of content, [REDACTED]

[REDACTED] Ex. 15 at 167:7-18.

52. Tags are essentially [REDACTED]

[REDACTED] *Id.*

53. Categories are [REDACTED]

[REDACTED]. (Ex. 101, Mindgeek\_NDAL\_00184480).

54. Mindgeek created a category for [REDACTED] videos. (Ex. 101).

55. MindGeek employees [REDACTED]

[REDACTED]. (Ex. 15 at 149:14-150:14) *see also* Ex. 102, MindGeek\_NDAL\_00120349 at 00120358, 00120362, and 00120365; and Ex. 103, Mindgeek\_NDAL\_00498073 at 00498083-84).

***Moderation***

56. MindGeek's moderators review all content uploaded to its websites. (Ex. 15 at 38:15-23; 51:6-52:3).

57. Since at least 2015, MindGeek has had content moderation teams in

[REDACTED] (Ex. 21 at 50:7-20, 89:2-90:2). [REDACTED]

[REDACTED] [Ex. 15 at 50:7-20]. [REDACTED]

[REDACTED]

[REDACTED] (Ex. 15 at 52:4-11). [REDACTED]

[REDACTED]

[REDACTED]. (Ex. 21 at 188:7-12; 190:15-192:5; 221:8-16). The [REDACTED] moderators review the [REDACTED] [REDACTED]. Id. The [REDACTED] moderators [REDACTED] [REDACTED] on the website. (Ex. 21 at 188:7-189:10).

58. Prior to 2021, [REDACTED] would only be [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]. (Ex. 77, MindGeek\_NDAL\_00551190 at 00551204-00551207).

59. Presently, all uploaded content (videos and photos) is [REDACTED] [REDACTED].

(Answer, Doc. 45 at ¶ 56; Ex. 16 at #s 3 & 5; Ex. 15 at 38:15-23; 51:6-52:3).

60. Notwithstanding the above, [REDACTED] [REDACTED] [REDACTED] (Ex. 56, MindGeek\_NDAL\_00062320 at 00062326-0062327).

61. [REDACTED] [REDACTED]. (Ex. 78, at 27:15-20, 29:6-13, 272:14-17).

62. The only job qualifications required for the role of moderator [REDACTED] [REDACTED] (Ex. 15 at 27:16-28:13).

63. Prior to 2020, MindGeek would determine whether uploaded content depicted individuals over the age of 18 [REDACTED] [REDACTED]. (Ex. 21 at 196:7–197:9).

64. MindGeek moderators [REDACTED] [REDACTED] and, in certain instances, would ultimately deem [REDACTED] [REDACTED] (Ex. 22, MindGeek\_NDAL\_00001927; Ex. 23, MindGeek\_NDAL\_00003131; Ex. 24, MindGeek\_NDAL\_00001921).

65. Moderators would [REDACTED] [REDACTED] (Ex. 15 at 132:6-10; 166:14-167:2; 264:2-17).

66. MindGeek’s former Content Manager admitted that she [REDACTED] [REDACTED] (Ex. 78, at 73:11–74:9, 340:8-12).

67. Historically, when an uploaded video was apparent or obvious CSAM, [REDACTED] [REDACTED] (Ex. 15 at 332:2-333:6; Ex. 21. at 89:4-25).

68. MindGeek defined “Obvious CSAM” [REDACTED]

[REDACTED]

[REDACTED] (Ex. 15 at 95:11-20).

69. MindGeek [REDACTED]

[REDACTED] . (Ex. 15 at 102:4-104:15). [REDACTED]

[REDACTED] (Ex. 15 at 109:21-110:20; Ex. 9, L [REDACTED]

30(b)(6) Dep. Trx. at 106:19-108:11).

70. MindGeek does not know [REDACTED]

[REDACTED] . (Ex. 9, [REDACTED] 30(b)(6) Dep. Trx. at 102:14-

108:17)

71. In certain instances, MindGeek moderators [REDACTED]

[REDACTED]

[REDACTED] Ex. 23 at 2 ([REDACTED]

[REDACTED]); Ex. 24, MindGeek\_ NDAL\_00001921 [REDACTED]

[REDACTED])).

72. Similary, MindGeek moderators [REDACTED]

[REDACTED] (Ex.

102 at 00120358, 00120362, 00120365; and Ex. 103 at 00498083-00498085) .

73. In June of 2020, Mindgeek created [REDACTED]

[REDACTED] (Ex. 21 at 81). The moderation process [REDACTED]

[REDACTED] (Ex. 15 at 332:17-333:6).

***Content Removal Requests***

74. On November 2, 2020, MindGeek received [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] MindGeek employee [REDACTED] subsequently sent a [REDACTED] to coworker [REDACTED] stating “[REDACTED]

[REDACTED] (Ex. 61,

MindGeek\_NDAL\_00110359 at 00110360).

75. That same day, [REDACTED] messaged [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (Ex.

62, MindGeek\_NDAL\_00526276 at 00526277-00526278).

***CSAI Match***

76. Mindgeek began [REDACTED]

[REDACTED] (Ex. 105, Mindgeek\_NDAL\_00010454 and Mindgeek\_NDAL\_00022847).

77. On April 7, 2020, in discussing CSAI match, [REDACTED] tells MindGeek employees [REDACTED] and [REDACTED] [REDACTED] (Ex. 58, MindGeek\_NDAL\_00524157 at 00524215).

78. On June 30, 2020, MindGeek content moderator [REDACTED] emailed coworker [REDACTED] bullet points summarizing the conversation they had, in which the first bullet point stated: [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] (Ex. 60, MindGeek\_NDAL\_00288355 at 1).

79. In that same email to [REDACTED] the third bullet point stated: [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED] (Ex. 60 at [REDACTED])

1).

[REDACTED] went on to write in the fourth bullet point: [REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED] (Ex. 60 at 2).

81. On July 7, 2021, MindGeek Tubes & Performers Compliance Lead

[REDACTED]  
[REDACTED]

[REDACTED] (Ex. 64, MindGeek\_NDAL\_0072866). The [REDACTED]  
attached to the email [REDACTED]

[REDACTED]. (Ex. 65,  
MindGeek\_NDAL\_00172867).

#### ***Banned Words List***

82. MindGeek has and updates [REDACTED]  
[REDACTED] MindGeek [REDACTED]

[REDACTED]. (Ex. 66, MindGeek\_NDAL\_00004211; Ex. 67, MindGeek\_NDAL\_00616621).

83. In April 2017, MindGeek employees discussed updates to the [REDACTED]  
[REDACTED] during which [REDACTED] acknowledged that [REDACTED]

[REDACTED] stated that he [REDACTED]  
[REDACTED] and listed the following [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] (Ex. 68,  
MindGeek\_NDAL\_00017944 at 2-3).

84. In June 2017, MindGeek executive [REDACTED] stated in an email to  
to his other colleagues that [REDACTED]  
[REDACTED] (Ex.  
69, MindGeek\_NDAL\_00016002 at 1).

85. In August 2018, MindGeek employees [REDACTED]  
[REDACTED] discussed a series of [REDACTED] MindGeek received  
from a user, who asked [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] (Ex. 70, MindGeek\_NDAL\_00224250).

86. On December 5, 2018, MindGeek employee [REDACTED]  
messaged [REDACTED] to which [REDACTED] responded

and [REDACTED] replied [REDACTED]. (Ex. 71, MindGeek\_NDAL\_00004409).

87. An excel sheet created on December 5, 2020 by MindGeek employee [REDACTED] lists the number of videos on Pornhub that have keywords in tags or titles that [REDACTED]  
[REDACTED]  
[REDACTED] (Ex. 67, MindGeek\_NDAL\_00616621). That excel sheet shows the following:

- a. [REDACTED] videos on Pornhub either had the keyword [REDACTED] in the title or a tag, or appeared in search results for [REDACTED] (Ex. 67, row 5).
- b. [REDACTED] videos on Pornhub either had the keyword [REDACTED] in the title or a tag, or appeared in search results for [REDACTED] (Ex. 67, row 6).
- c. [REDACTED] videos on Pornhub either had the keyword [REDACTED] in the title or a tag, or appeared in search results for [REDACTED].” (Ex. 67, row 27).
- d. [REDACTED] videos on Pornhub either had the keyword [REDACTED] in the title or a tag, or appeared in search results for [REDACTED] (Ex. 67, row 48).

88. On March 22, 2019, MindGeek Content Compliance and Brand Protection Senior Content Analyst [REDACTED] emailed [REDACTED]  
[REDACTED]

[REDACTED]

[REDACTED] (Ex. 73, MindGeek\_NDAL\_00004210).

89. In the [REDACTED] attached to the above March 22, 2019 email, [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]. (Ex. 66, MindGeek\_NDAL\_00004211).

***User Bans Are Ineffective***

90. Mindgeek bans [REDACTED]  
[REDACTED]  
[REDACTED] (Ex. 106, Defendants' Objections and Responses to Plaintiffs' First Set of Interrogatories, at No. 5).

91. But banned users can simply [REDACTED]  
to access MindgGeek's websites. (Ex. 107, MindGeek\_NDAL\_00198448 at Mindgeek\_NDAL\_00198454-56). This was an issue as [REDACTED]  
(Ex. 108, MindGeek\_NDAL\_00473703 (discussing how to solve the problem)).

92. The [REDACTED] has not been implemented. (Ex. 106 at No. 5).

***MindGeek Reports Apparent CSAM to NCMEC***

93. In April 2020, MindGeek [REDACTED]

[REDACTED] (Answer, Doc. 45 at ¶ 135; Ex. 39, MindGeek\_NDAL\_00056860; Ex. 18, [REDACTED] CDCA 30(b)(6) Dep. Trx. at 71:24–72:7).

94. As part of its efforts to report [REDACTED] MindGeek audited content previously uploaded to its websites [REDACTED]

[REDACTED] (Ex. 18 at 71:24–72:7).

95. As part of the audit to report [REDACTED] MindGeek created the [REDACTED] which MindGeek titled [REDACTED] (Ex. 40, A. Walling CDCA Dep. Trx. at 93:4-11; Ex. 41, MindGeek\_NDAL\_00617077).

96. MindGeek employees classify [REDACTED]

[REDACTED] (Ex. 42, MindGeek\_NDAL\_00193117; Ex. 41; Ex. 43, MindGeek\_NDAL\_00105907 ([REDACTED]

[REDACTED]); Ex. 44, MindGeek\_NDAL\_00206625 [REDACTED]  
[REDACTED]  
[REDACTED] [REDACTED] [REDACTED] [REDACTED]); Ex. 45, MindGeek\_NDAL\_00526277 (“[REDACTED]  
[REDACTED]”))

97. MindGeek defines [REDACTED] CSAM as [REDACTED]  
[REDACTED] (Ex. 39; see also Ex. 46, MindGeek\_NDAL\_00066172 [REDACTED]  
[REDACTED]).

98. MindGeek reports [REDACTED] (Ex. 46; Ex. 39; Ex. 47, MindGeek\_NDAL\_00073926; Ex. 21 at 129:12-13; Ex. 40, at 177:3-178:10; Ex. 18 at 51:21-52:7).

99. One MindGeek moderator estimated that he [REDACTED]  
[REDACTED] (Ex. 39 (emphasis in original); see also Ex. 48, MindGeek\_NDAL\_00059165 at 00059215).

100. Initially, MindGeek submitted [REDACTED]  
and MindGeek established an [REDACTED] for completing the [REDACTED].  
(Ex. 39).

101. In early April 2020 when discussing the [REDACTED] [REDACTED]  
[REDACTED] then-Safety & Policy Manager Ashley Walling indicated that they [REDACTED]  
[REDACTED]

[REDACTED] (Ex. 47, at 1) (emphasis in original).

102. Beginning in April 2020, [REDACTED]  
[REDACTED]. (See,

e.g., Ex. 49, MindGeek\_NDAL\_00056694; Ex. 50, MindGeek\_NDAL\_00055833; Ex. 51, MindGeek\_NDAL\_00055835; Ex. 52, MindGeek\_NDAL\_00057499; Ex. 53, MindGeek\_NDAL\_00056813).

103. MindGeek has made [REDACTED]

[REDACTED] since it began [REDACTED] in April 2020. (Ex. 16 at 10; Ex. 54, NCMEC 2020-2022 CyberTipline Reports by ESPs at 4).

104. To assist [REDACTED], MindGeek sometimes [REDACTED]

[REDACTED]  
[REDACTED]

[REDACTED] (Ex. 9, [REDACTED] 30(b)(6) Dep. Trx. at 147:25–149:14; Ex. 18 at 187:14–188:4).

105. MindGeek [REDACTED] at least [REDACTED] videos of [REDACTED]

[REDACTED]  
[REDACTED] (Ex.

12, MindGeek\_NDAL\_00575654). According to just one of the Defendants internal reports, [REDACTED]

[REDACTED]. (Ex. 9, [REDACTED])

106. As part of the 2020 audit, MindGeek moderators reviewed content uploaded by a user [REDACTED]

[REDACTED]  
[REDACTED] (Ex. 18 at 76:12-22; Ex. 40, at 203:18–204:5).

***Users Flagged CSAM On The Websites***

107. MindGeek has [REDACTED]  
[REDACTED] (Ex. 75, MindGeek\_NDAL\_00385904; Ex. 76, MindGeek\_NDAL\_00072820).

108. On May 27, 2020, MindGeek employees discussed this procedure;

[REDACTED] stated that [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] (Ex. 75, at 5, 7-8).

109. In June 2020, MindGeek [REDACTED]  
[REDACTED]. (Ex. 76, at 3).

110. That same month, MindGeek employee [REDACTED] emailed other MindGeek employees [REDACTED]  
(Ex. 76, at 2).

111. MindGeek moderators [REDACTED]

[REDACTED] (Ex.

12, MindGeek\_NDAL\_00575654).

112. A video uploaded in August [REDACTED]

[REDACTED] (Ex. 12, MindGeek\_NDAL\_00575654, row 565).

113. A video uploaded in June 2016—[REDACTED]

[REDACTED] (Ex. 12,

MindGeek\_NDAL\_00575654, row 1035).

114. A video uploaded in October 2016—[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (Ex. 12,

MindGeek\_NDAL\_00575654, row 1228).

115. A video uploaded in June 2017—[REDACTED]

[REDACTED]

[REDACTED] (Ex. 12,

MindGeek\_NDAL\_00575654, row 2071).

116. A video uploaded in July 2017— [REDACTED]

[REDACTED]

[REDACTED] (Ex. 12,

MindGeek\_NDAL\_00575654, row 2179).

117. A video uploaded in April 2018— [REDACTED]

[REDACTED]

[REDACTED] (Ex. 12,

MindGeek\_NDAL\_00575654, row 3531).

118. A video uploaded in May 2018 entitled [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (Ex. 12, MindGeek\_NDAL\_00575654, row 3721).

119. A video uploaded on September 15, 2018 [REDACTED]

[REDACTED]

[REDACTED]

(Ex. 12, MindGeek\_NDAL\_00575654, row 4516).

***Employees encountered CSAM on live sites***

120. On March 15, 2020, MindGeek employee [REDACTED] informed his coworker [REDACTED] that an account that uploaded [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (Ex. 55, MindGeek\_NDAL\_00613679 at 2).

121. On March 18, 2020, MindGeek employees [REDACTED] and [REDACTED] [REDACTED] discussed how MindGeek content moderators located in Cyprus [REDACTED] [REDACTED] recounted a specific [REDACTED] the Cyprus moderators [REDACTED] [REDACTED] [REDACTED] [REDACTED] (Ex. 48, at 34-35).

122. On March 18, 2020, [REDACTED] [REDACTED] [REDACTED] [REDACTED] (Ex. 48, at 28-29).

123. On March 18, 2020, [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

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<sup>1</sup>

[REDACTED] (Ex. 48, at 41).

[REDACTED] (Ex. 48, at 29-30).

124. On March 19, 2020, in discussing [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED] (Ex. 48, at 49-52).

125. On March 19, 2020, [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED] (Ex. 55, at 00613689-0061390).

126. On March 19, 2020, [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED] (Ex. 48, at 00059213).

127. On April 1, 2020, [REDACTED]  
[REDACTED]  
[REDACTED] (Ex. 56 at 00062322).

128. On April 3, 2020, [REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED] (Ex. 57, MindGeek\_NDAL\_00058938 at 00058939).

129. [REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED] (Ex. 59, MindGeek\_NDAL\_00067691 at 00067701).

130. [REDACTED]  
[REDACTED]

[REDACTED] (Ex. 79, MindGeek\_NDAL\_00575115).

***Third Parties Notified Defendants About CSAM On Sites***

131. Prior to 2020, various third parties alerted MindGeek to [REDACTED] that was [REDACTED]

- a. In June 2015, a user submitted [REDACTED] requesting the [REDACTED] [REDACTED] (Ex. 31, MindGeek\_NDAL\_00256738);
- b. In December 2015, [REDACTED] emailed MindGeek requesting the [REDACTED] [REDACTED] (Ex. 32, MindGeek\_NDAL\_00039003);
- c. In April 2016, [REDACTED] [REDACTED] [REDACTED] (Ex. 33, MindGeek\_NDAL\_00618041, row 8);
- d. In January 2018, [REDACTED] [REDACTED] [REDACTED] (Ex. 34, MindGeek\_NDAL\_00012185);
- e. In March-April 2019, [REDACTED] [REDACTED] (Ex. 35, MindGeek\_NDAL\_00001378);
- f. In August 2019, [REDACTED] [REDACTED] [REDACTED] (Ex. 38, MindGeek\_NDAL\_00002720).

g. In November 2019, [REDACTED]

[REDACTED] (Ex.

36, MindGeek\_NDAL\_00010369; Ex. 37, MindGeek\_NDAL\_00010371).

132. Third parties [REDACTED]

even after Mindgeek had performed the audit in 2020.

a. In June 2021, the [REDACTED] sent a [REDACTED]  
[REDACTED] to MindGeek, attaching a weblink [REDACTED]  
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]. (Ex. 80,  
MindGeek\_NDAL\_00575111).

b. In January 2022, the [REDACTED]  
[REDACTED]  
[REDACTED] (Ex. 81,  
MindGeek\_NDAL\_00575119).

***Data Showed CSAM On Mindgeek's Websites***

133. MindGeek [REDACTED]  
[REDACTED] (See, e.g., Ex. 25, MindGeek\_NDAL\_00619872; Ex. 26,  
MindGeek\_NDAL\_00618542; Ex. 27, MindGeek\_NDAL\_00619704; Ex. 28,  
MindGeek\_NDAL\_00619754; Ex. 29, MindGeek\_NDAL\_00619811; Ex. 30,  
MindGeek\_NDAL\_00619975).

134. In 2014, MindGeek compiled data showing that, among the worldwide searches on Pornhub, the search term [REDACTED] increased from the [REDACTED]  
[REDACTED] (Ex. 25 at 18).

135. In 2014, MindGeek compiled data showing that, among the worldwide searches on Youporn, [REDACTED]  
[REDACTED] ) increased [REDACTED]  
[REDACTED] (Ex. 25 at 30).

136. MindGeek compiled data showing that, at some point in 2015, [REDACTED]  
[REDACTED] increased [REDACTED]  
[REDACTED]  
[REDACTED] (Ex. 26 at 3, 5).

137. In the last quarter of 2015, MindGeek compiled data showing that, among the worldwide searches on Pornhub, [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]. (Ex. 27 at 16-17, 26-27).

138. In the last quarter of 2016, [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] (Ex. 28 at 16-17, 26-27).

139. In one quarter of 2017, [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] (Ex. 29 at 16-17, 26-27).

140. In the first quarter of 2019, [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] (Ex. 30, at 2-3).

141. On March 4, 2019, [REDACTED]  
[REDACTED]  
[REDACTED]

(Ex. 72, MindGeek\_NDAL\_00022516).

### **LEGAL STANDARD**

Summary judgment is appropriate “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). “A fact is ‘material’ if it could ‘affect the outcome’ of the case[,]” and “[a] material fact is in ‘genuine’ dispute ‘if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.’”

*Bennett v. Walmart, Inc.*, --- F. Supp. 3d ----, 2024 WL 1181465, at \*2 (N.D. Ala. Mar. 19, 2024) (quoting *Furcron v. Mail Ctrs. Plus, LLC*, 843 F.3d 1295, 1303 (11th Cir. 2016)). While “[t]he Court must construe the evidence and all reasonable inferences arising from it in the light most favorable to the non-moving party[,]”

*Harrell v. Wal-Mart Stores E., LP*, --- F. Supp. 3d ----, 2024 WL 1199691, at \*1 (N.D. Ala. Mar. 20, 2024), “[c]onclusory allegations and ‘mere scintilla of evidence in support of the nonmoving party will not suffice to overcome a motion for summary judgment.”

*Arnold v. Elmington Prop. Mgmt., LLC*, 679 F. Supp. 3d 1220, 1223 (N.D. Ala. 2023) (Coogler, J.) (quoting *Melton v. Abston*, 841 F.3d 1207, 1219 (11th Cir. 2016)). The nonmovant must “produce *significant*, probative evidence demonstrating a genuine issue for trial.”

*Karl Storz Endoscopy-Am., Inc. v. STERIS Instrument Mgmt. Servs., Inc.*, 603 F. Supp. 3d 1111, 1120 (N.D. Ala. 2022)

## I. The Undisputed Facts Show that MindGeek Received, Possessed, and Distributed CSAM

As shown through MindGeek's own records and the testimony of its former and current employees, there is no genuine dispute that MindGeek received, possessed, and distributed CSAM. MindGeek has explicitly admitted that [REDACTED]

[REDACTED]

[REDACTED]. SUMF ¶¶ 30-31.

When MindGeek created the [REDACTED]

MindGeek employees were explicitly directed to classify [REDACTED]

[REDACTED] SUMF ¶¶ 95-96. MindGeek has defined [REDACTED] as being content in which [REDACTED]

[REDACTED] SUMF ¶ 97 (quoting Ex. 39, MindGeek\_NDAL\_00056860); *see also id.* (citing Ex. 46, MindGeek\_NDAL\_00066172 at 1 (explaining that [REDACTED]

[REDACTED]

And when MindGeek started reporting CSAM to NCMEC, internal MindGeek records show MindGeek's explicit directive to [REDACTED]

[REDACTED]. SUMF ¶ 98. MindGeek has reported more than [REDACTED]

[REDACTED]. SUMF ¶ 103. Notably, various [REDACTED]

[REDACTED].

SUMF ¶ 98 (citing Ex. 21, A. Ignatiou CDCA 30(b)(6) Dep. Trx. at 129:12-13; Ex.

40, A. Walling CDCA Dep. Trx. at 177:3–178:10; Ex. 18, L. Franklin CDCA 30(b)(6) Dep. Trx. at 51:21–52:7).

Additionally, MindGeek allowed [REDACTED]

[REDACTED] . SUMF ¶ 50. And during the time period in which MindGeek was conducting its [REDACTED] audit, *see* SUMF ¶ 94, MindGeek employees discussed [REDACTED]

[REDACTED] . SUMF ¶ 123. One MindGeek employee even admitted that [REDACTED]

[REDACTED] . *See id.*

These facts prove that MindGeek has not only received CSAM, but that MindGeek retained possession of it and has distributed CSAM to its websites' users and even its own employees. *See United States v. Dixon*, 589 F. App'x 427, 4 (11th Cir. 2014) (finding sufficient evidence that the defendant knowingly received and possessed child pornography after he admitted using the terms “young girls” and “teens” to search for and download child pornography and downloaded CSAM was found on his computer.); *see also United States v. Owens*, 18 F.4th 928, 930–31 (7th Cir. 2021) (alteration in original) (“It is criminal ‘distribut[ion]’ of child pornography within the meaning of 18 U.S.C. § 2252(a)(2) to knowingly make a file containing child pornography available for others to access and download”); *United States v. Chiaradio*, 684 F.3d 265, 282 (1st Cir. 2012) (explaining that distribution

occurs where the defendant “consciously makes files available for others to take and those files are in fact taken” and further explaining that “[t]he fact that the defendant did not actively elect to transmit those files is irrelevant.”); *United States v. Moran*, 771 F. App’x 594, 598 n.4 (6th Cir. 2019) (quoting *United States v. Richardson*, 713 F.3d 232, 235-36 (5th Cir. 2013)) (“An analogy adopted by some circuits compares the distribution of child pornography through peer-to-peer sharing ‘to that of the owner of a self-service gas station: although the owner might not be present and does nothing when a motorist purchases gas at the pump, the gas station owner distributes gasoline just as a computer user on a peer-to-peer network distributes child pornography—by making the material available for other users on the network just as the gasoline is available to passing motorists.’”).

## **II. MindGeek Received and Distributed CSAM in Interstate Commerce as a Matter of Law**

In opposing class certification, MindGeek did not dispute that this interstate commerce element of the §§ 2252 and 2252A is satisfied as a matter of law. Nor could they, since “[t]he internet is an instrumentality of interstate commerce[,]” *United States v. Hornaday*, 392 F.3d 1306, 1311 (11th Cir. 2004), and the Eleventh Circuit has made clear that the interstate commerce element is satisfied where CSAM is transmitted over the internet. *See, e.g., United States v. Machtle*, 163 F. App’x 837, 839 (11th Cir. 2006) (“The use of the internet to transmit or receive child pornography is interstate commerce.”); *United States v. Hair*, 178 F. App’x 879, 886

(11th Cir. 2006) (use of a “computer and the internet to transport and receive images of child pornography . . . . are clearly instrumentalities of interstate commerce.”); *United States v. Walters*, 182 F. App’x 944, 945 (11th Cir. 2006) (“download[ing] pornographic images using the internet, which is an instrument of interstate commerce[,]” satisfied interstate commerce element of § 2252A).

MindGeek operates some of largest commercial pornography websites in the world, and those websites are available worldwide. SUMF ¶ 29. MindGeek receives the content for its websites—including the CSAM that has appeared on the websites—from third parties via the internet. SUMF ¶ 41. In turn, much of the CSAM received through the websites subsequently has been distributed to MindGeek’s users in the United States and worldwide through MindGeek’s websites. Accordingly, the undisputed facts show that the interstate commerce element of §§ 2252 and 2252A is satisfied.

### **III. The Undisputed Facts Overwhelmingly Prove MindGeek’s Knowledge of its Receipt, Possession, and Distribution of CSAM**

As this Court has recognized, the knowledge element of a child pornography claim can be proven by evidence of actual knowledge *or* circumstantial evidence. *Doe v. MG Freesites, LTD*, --- F. Supp. 3d ----, 2023 WL 8792153, at \*13 (N.D. Ala. Dec. 19, 2023) (Coogler, J.) (“Circumstantial evidence can be used to prove that a defendant knowingly received or distributed CSAM.”). Also, “it is well established that a federal claim’s ‘knowledge element’ ‘can be proved by

demonstrating either actual knowledge or deliberate ignorance.”” *Does I-4 v. Red Roof Inns, Inc.*, 688 F. Supp. 3d 1247, 1254 (N.D. Ga. 2023) (quoting *United States v. Prather*, 205 F.3d 1265, 1270 (11th Cir. 2000)). “[T]o prove either actual knowledge or deliberate ignorance, Plaintiff may rely on both direct evidence and circumstantial evidence based on the ‘totality’ of circumstances.” *Id.* (citing *United States v. Perez*, 698 F.2d 1168, 1171 (11th Cir. 1983)). “[I]f a party has his suspicions aroused but then deliberately omits to make further enquiries, because he wishes to remain in ignorance, he is deemed to have knowledge.”” *Red Roof Inns.*, 688 F. Supp. 3d at 1254 (quoting *Prather*, 205 F.3d at 1270). A court can find knowledge as a matter of law, and thus grant summary judgment, where the evidence is such that “a reasonable jury could [] not reach a contrary conclusion.” *Chanel, Inc. v. Italian Activewear of Fla., Inc.*, 931 F.2d 1472, 1476 n.6 (11th Cir. 1991) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)).<sup>3</sup>

Here, the undisputed material facts overwhelmingly show that MindGeek was deliberately indifferent to—and thus had knowledge of—the CSAM it received, possessed, and distributed on its websites.

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<sup>3</sup> See also *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (internal quotations and citation omitted) (“Where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no genuine issue for trial.”).

**A. MindGeek has received [REDACTED] regarding CSAM on its websites.**

MindGeek has been long aware of CSAM on its websites because, throughout the class period, MindGeek has [REDACTED]

[REDACTED]. For example:

- In June 2015, [REDACTED]

[REDACTED]

[REDACTED]; [REDACTED]

- In December 2015, [REDACTED]

[REDACTED]

[REDACTED]; [REDACTED]

- In April 2016, [REDACTED]

[REDACTED]

[REDACTED]; [REDACTED]

- In January 2018, [REDACTED]

[REDACTED]

[REDACTED]; [REDACTED]

In March-April 2019, [REDACTED]

[REDACTED]

- In November 2019, [REDACTED]

[REDACTED];

- In June 2021, [REDACTED]

[REDACTED];

- In January 2022, [REDACTED]

[REDACTED]”.

SUMF ¶¶ 131 & 132.

Of course, the above are a small sampling of the numerous instances during the class period [REDACTED]

[REDACTED]. MindGeek cannot credibly claim that it was not aware of the CSAM on its websites when [REDACTED]

[REDACTED]. *See United States v. Heredia*, 483 F.3d 913, 920 n.10 (9th Cir. 2007) (explaining that “deliberate ignorance” is “when an individual has sufficient information so that he can be deemed to ‘know’ something, even though he does not take the final step to confirm that knowledge[,]” and that “[t]he *reason* the individual fails to take that final step has no bearing on whether he has sufficient information so he can properly be

deemed to ‘know’ the fact. An innocent motive for being deliberately ignorant no more vitiates the knowledge element of a crime than does an innocent motive vitiate any other element.”).

**B. MindGeek’s own employees have come across CSAM on MindGeek’s websites.**

To make matters worse, MindGeek’s content moderators review all the content that is uploaded to its websites, SUMF ¶ 56—*meaning that MindGeek’s employees personally reviewed the CSAM identified in Section III.A above and the thousands of CSAM videos reported to NCMEC and either left it to remain publicly available for viewing or approved it to go live for public viewing*. See *United States v. Alfaro-Moncada*, 607 F.3d 720, 733 (11th Cir. 2010) (finding sufficient evidence that the defendant knowingly possessed child pornography, despite his testimony that “he had bought the DVDs without knowing that they contained child pornography[,]” because the “the covers of the DVD cases” showed “young girls [of unstated ages] engaging in sex acts” and the defendant admitted that “he watched a ‘little bit’ of the DVDs inside” those cases). Indeed, MindGeek’s former [REDACTED]

[REDACTED] SUMF ¶ 61.

Notably, prior to 2020 [REDACTED]

[REDACTED], MindGeek relied on its [REDACTED]

[REDACTED]. SUMF ¶¶ 48, 63. In instances

where [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. SUMF ¶ 64; *see Doe v. Peterson*, 784

F. Supp. 2d 831, 835 (E.D. Mich. 2011) (denying the defendants' motion for summary judgment where, *inter alia*, one of the defendants admitted that, aside from trusting that users comply with their submission rules, "the only additional safeguard he has against posting pictures of minors is that he judges to see whether they could pass for 18."). Such [REDACTED]

[REDACTED]

[REDACTED].” SUMF ¶ 64 (citing Ex. 22, MindGeek\_NDAL\_00001927); *see Doe v. Vazquez*, 2023 WL 2930755, at \*2 (M.D. Fla. Feb. 3, 2023) (finding that the defendant violated §§ 2252 and 2252A where, *inter alia*, he “admitted at all relevant times that Doe appeared ‘too young’”). And, in some instances [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. SUMF ¶ 71; *see United States v. Brooks*, 647 F. App’x 988, 992 (11th Cir. 2016) (finding sufficient circumstantial evidence that the defendant knowingly possessed child pornography

where, *inter alia*, “the child pornography files had been refined through deletions and re-naming.”). In 2019, one MindGeek employee [REDACTED]

[REDACTED]. SUMF ¶ 131.f.

**C. MindGeek’s own employees [REDACTED] when conducting the audit.**

When MindGeek conducted its audit of all content uploaded to its websites to

[REDACTED], *see* SUMF ¶¶ 93-94, 97-98, MindGeek employees were directed to classify [REDACTED]

[REDACTED]. SUMF ¶ 96. MindGeek moderators also were [REDACTED]

[REDACTED]. SUMF ¶¶ 100-102. Moreover, MindGeek moderators would sometimes [REDACTED]

[REDACTED].<sup>4</sup> SUMF ¶ 104. [REDACTED]

[REDACTED], *see* SUMF ¶ 103, MindGeek has [REDACTED]

[REDACTED]

[REDACTED] SUMF ¶ 105. According to just one of MindGeek’s

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<sup>4</sup> [REDACTED]

SUMF ¶ 104.

internal reports, [REDACTED]

[REDACTED] *Id.*

During the audit, MindGeek employees [REDACTED]

[REDACTED] See SUMF ¶¶ 74-75, 77-81, 120-127,

129. One MindGeek employee estimated that he encounters [REDACTED]

[REDACTED] SUMF ¶ 99 (emphasis in original)

(citing Ex. 39, MindGeek\_NDAL\_00056860). One employee told a colleague that

[REDACTED]

[REDACTED] while on a different occasion, an employee [REDACTED]

[REDACTED]

SUMF ¶¶ 120, 75. One employee told a colleague [REDACTED]

[REDACTED] because [REDACTED]

[REDACTED] SUMF ¶ 122. In discussing [REDACTED]

[REDACTED], one employee

indicated that [REDACTED]

[REDACTED]” SUMF ¶ 125. One employee told his colleagues that the CSAI

match [REDACTED] SUMF ¶ 77. One employee

shared a [REDACTED]

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<sup>5</sup> See note 1, *supra* (citing Ex. 48, MindGeek\_NDAL\_00059165 at 41) [REDACTED]

[REDACTED]<sup>6</sup> SUMF ¶ 129. One employee told her colleague of [REDACTED]  
[REDACTED]  
[REDACTED]

SUMF ¶ 74; *see United States v. Davis*, 41 F. App'x 566, 572 (3d Cir. 2002) (finding sufficient evidence that the defendant knowingly received child pornography where the description of the content said it involved “allegedly cousins aged 14-15” and another “as involving a thirteen year old.”).

MindGeek employees even discussed how [REDACTED]

[REDACTED] SUMF ¶¶ 78, 121, 124, 127. As one MindGeek employee acknowledged, [REDACTED]  
[REDACTED] SUMF ¶ 124. At one point, moderators were [REDACTED]  
[REDACTED]  
[REDACTED] SUMF ¶ 128.

MindGeek cannot credibly deny that it knew about the CSAM on its websites when its own moderators [REDACTED]

[REDACTED] SUMF ¶ 99. *See Vazquez*,

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<sup>6</sup> *See United States v. Davis*, 41 F. App'x 566, 572 (3d Cir. 2002) (finding sufficient evidence that the defendant knowingly received child pornography where the description of the content said it involved “allegedly cousins aged 14-15” and another “as involving a thirteen year old.”).

2023 WL 2930755, at \*2. In fact, MindGeek’s removal of the CSAM found during the audit is itself circumstantial evidence of its knowledge. *See United States v. Myers*, 560 F. App’x 184, 186 (4th Cir. 2014) (“[A] defendant’s attempts to delete a computer’s temporary internet files and browsing history are circumstantial evidence supporting knowing receipt of child pornography, given that a defendant’s scrubbing of the evidence indicates some degree of prior awareness that images . . . w[ere] saved to his computer.”); *United States v. Tucker*, 150 F. Supp. 2d 1263, 1269 (D. Utah 2001), *aff’d*, 305 F.3d 1193 (10th Cir. 2002) (holding that the defendant had knowledge of the child pornography on his computer, and thus violated § 2252A, because the defendant had deleted the files and he “would not know to delete the files if he did not know that he possessed them.”); *United States v. Bass*, 411 F.3d 1198, 1202 (10th Cir. 2005) (relying on *Tucker* to find that there was sufficient evidence the defendant had knowledge of the child pornography saved on his computer because he “used two software programs . . . in an attempt to remove child pornography from the computer.”).

**D. MindGeek’s policies and internal records show its deliberate indifference to the CSAM on its websites.**

MindGeek’s own policies and internal records further demonstrate that it was deliberately indifferent to—and thus had knowledge of—the CSAM on its websites.

To begin with, [REDACTED]

[REDACTED]. SUMF ¶ 48. MindGeek also let [REDACTED]

██████████ SUMF ¶ 50. *See Owens*, 18 F.4th at 930–31 (alteration in original) (“It is criminal ‘distribut[ion]’ of child pornography within the meaning of 18 U.S.C. § 2252(a)(2) to knowingly make a file containing child pornography available for others to access and download”); *Chiaradio*, 684 F.3d at 282 (explaining that distribution occurs where the defendant “consciously makes files available for others to take and those files are in fact taken” and further explaining that “[t]he fact that the defendant did not actively elect to transmit those files is irrelevant.”); *see also Moran*, 771 F. App’x at 598 n.4.

Despite the ██████████

██████████ *see, e.g.*, SUMF ¶¶ 131-132, MindGeek moderators were ██████████

██████████. SUMF ¶ 78. MindGeek’s own moderators ██████████, but that there was ██████████

██████████ SUMF ¶ 79. The ██████████  
 ██████████ *Id.* At one point, MindGeek employees ██████████  
 ██████████

[REDACTED] SUMF ¶ 121. These same moderators even discussed how they [REDACTED]

[REDACTED] SUMF ¶ 126.

Moreover, despite the [REDACTED] CSAM on MindGeek's websites that various

[REDACTED], *see, e.g.*, SUMF ¶¶ 131-132,

in the midst of the CSAM [REDACTED], MindGeek's [REDACTED]

[REDACTED]. SUMF ¶¶ 107-108. During the [REDACTED] audit, MindGeek also

[REDACTED]. SUMF ¶ 109. This [REDACTED]

[REDACTED] SUMF ¶ 110. And regarding MindGeek's internal records of flagged

content, the records show:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]



[REDACTED]

[REDACTED]

[REDACTED]

SUMF ¶ 111-119 (citing Ex. 12, MindGeek\_NDAL\_00575654, rows 565, 1035, 1228, 2071, 2179, 3531, 3721, 4516).

MindGeek also [REDACTED]

[REDACTED] SUMF ¶ 133. MindGeek's internal records on [REDACTED]

[REDACTED]

• [REDACTED]

A page with several horizontal black redaction bars. A small black dot is at the top left. A small black vertical bar is near the center. A small yellow vertical bar is near the bottom left. A small black horizontal bar is at the bottom right.

SUMF ¶ 134-140.

Additionally, MindGeek retains a

SUMF ¶ 82. Despite

, see, e.g., SUMF ¶ 66,

<sup>11</sup> SUMF ¶¶ 83, 85. In some instances,

SUMF ¶ 84, 86. And in other instances,

<sup>7</sup> MindGeek's then-Content Manager understands that SUMF ¶ 66.

[REDACTED] SUMF ¶ 88. Notably, in an excel sheet created in [REDACTED]  
[REDACTED].

- [REDACTED] videos either had the keyword [REDACTED] in the title or a tag or appeared in search results for [REDACTED]
- [REDACTED] videos either had the keyword [REDACTED] in the title or a tag or appeared in search results for [REDACTED]
- [REDACTED] videos either had the keyword [REDACTED] in the title or a tag or appeared in search results for [REDACTED]
- and [REDACTED] videos either had the keyword [REDACTED] in the title or a tag, or appeared in search results for [REDACTED]

SUMF ¶¶ 87; *see Brooks*, 647 F. App’x at 992 (finding sufficient circumstantial evidence that the defendant knowingly possessed child pornography where, *inter alia*, “the search terms in the [defendant’s] file sharing program were related to child pornography”); *United States v. Cowan*, 2012 WL 5834582, at \*3 (11th Cir. Nov. 19, 2012) (finding sufficient evidence that the defendant knowingly received child pornography where, *inter alia*, the defendant “admitted that he knew that the file names were indicative of child pornography, because he kept a list of terms that were used to identify files that had child pornography.”); *United States v. Becker*, 666 F. App’x 825, 827 (11th Cir. 2016) (finding sufficient circumstantial evidence that the

defendant knowingly received and possessed child pornography where, *inter alia*, “over 1,000 titles indicative of child pornography had been downloaded and . . . search terms associated with child pornography” were also found).

**E. MindGeek was deliberately indifferent to Jane Doe’s CSAM**

As to Jane Doe herself, the accumulation of all of the above facts—coupled with the particular circumstances involving Jane Doe’s CSAM—show MindGeek’s deliberate indifference to (and thus knowledge of) Jane Doe’s CSAM.

MindGeek moderators [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] SUMF ¶¶ 56-57, 59, 63-65. At the time when the first video depicting Jane Doe was uploaded [REDACTED]

[REDACTED]; it simply relied on [REDACTED]

[REDACTED]. SUMF ¶¶ 48, 63-65.

[REDACTED] repeatedly posted videos with Titles and Tags indicating his videos were CSAM. [REDACTED] used [REDACTED] [REDACTED] and [REDACTED] when titling the videos he posted of Jane Doe. SUMF ¶¶ 3-8, 10-16.

[REDACTED]

[REDACTED] SUMF ¶¶ 11-13; Exs. 6-8,

Mindgeek\_NDAL\_00606288-90. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] SUMF ¶ 11-13. [REDACTED]

[REDACTED] . SUMF ¶

12. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] SUMF ¶ 13. The next day, [REDACTED]

[REDACTED] SUMF ¶ 14.<sup>8</sup>

Less than three months later, on May 1, 2020, [REDACTED] posted the video of his assault on Jane Doe to Pornhub. SUMF ¶ [REDACTED]

[REDACTED]" *Id.* (citing Ex. 1, Mindgeek\_NDAL\_00104652 at Tab " [REDACTED]-All Videos" row 6). Even though [REDACTED]

[REDACTED]

[REDACTED]

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<sup>8</sup>

[REDACTED] SUMF ¶ 15. It is likely that [REDACTED]

[REDACTED] [SUMF ¶ 11. This indicates [REDACTED]

[REDACTED] MindGeek allowed [REDACTED] to post Jane Doe's Rape Video.

SUMF ¶¶ 11-16.

[REDACTED]. *See* Ex. 5, MindGeek\_NDAL\_00114478. MindGeek [REDACTED]

[REDACTED] In fact, if MindGeek had reviewed [REDACTED] other uploaded content when it [REDACTED], it would have seen that one of Jane Doe's CSAM videos was, at that time, [REDACTED]

[REDACTED] *See* Ex. 3, P1.1183. [REDACTED]

[REDACTED] only when law enforcement contacted MindGeek about Jane Doe's videos—that MindGeek [REDACTED]

[REDACTED]. SUMF ¶¶ 11-23. In addition, [REDACTED] until two years later *after* law enforcement contacted MindGeek and [REDACTED]

[REDACTED] and one year after the filing of this lawsuit. SUMF ¶¶

26-27.

This is overwhelming and indisputable evidence of MindGeek's deliberate indifference to—and knowledge of—Jane Doe's CSAM that MindGeek received and distributed on its websites.

## **CONCLUSION**

For all the foregoing reasons, Plaintiff Jane Doe respectfully requests that the Court grant this Motion and enter partial summary judgment in her favor and against Defendants on her claim brought under 18 U.S.C. §§ 2252 and 2252A.

Respectfully submitted this 6th day of September 2024,

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**CERTIFICATE OF SERVICE**

I hereby certify on this 6th day of September 2024, this document was filed through the Electronic Case Filing System of the United States District Court for the Northern District of Alabama and will be served electronically by the court to all participants of record.

*/s/ Gregory Zarzaur*

Gregory Zarzaur